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**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION**

Jennifer Gibby,

Plaintiff,

v.

American Express Company,

Defendant.

Case No.

COMPLAINT AND DEMAND FOR  
JURY TRIAL FOR VIOLATIONS OF:

1. Telephone Consumer Protection Act,  
47 U.S.C. § 227 *et seq.*; and
2. SCCPA, South Carolina Consumer  
Protection Act, S.C. Code Ann § 37-5-  
108
3. SCUTPA, South Carolina Unfair Trade  
Practices Act, S.C. Code Ann § 395-20
4. Invasion of Privacy - Intrusion Upon  
Seclusion

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Jennifer Gibby (“Plaintiff”), by and through her attorneys, alleges the following against American Express Company (“Defendant” or “American Express”):

**INTRODUCTION**

1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission (“FCC”).

2. Count II of Plaintiff’s Complaint is based upon the South Carolina Consumer Protection Act (“SCCPA”), S.C. Code Ann § 37-5-108, which prohibits unconscionable

1 conduct in collecting a debt. Unconscionable conduct under the statute includes “caus[ing]  
2 a telephone to ring repeatedly during a twenty-four-hour period. . .” S.C. Code Ann § 37-  
3 5-108(5)(vii).  
4

5 3. Count III of Plaintiff’s Complaint is based on upon the South Carolina Unfair Trade  
6 Practices Act (“SCUTPA”), S.C. Code Ann § 395-20, which prohibits “unfair or deceptive  
7 acts or practices in the conduct of any trade or commerce. . .”  
8

9 4. Count IV of Plaintiff’s Complaint is based upon the Invasion of Privacy - Intrusion  
10 upon Seclusion, as derived from § 652B of the Restatement (Second) of Torts. § 652B  
11 prohibits an intentional intrusion, “physically or otherwise, upon the solitude or seclusion  
12 of another or his private affairs or concerns... that would be highly offensive to a  
13 reasonable person.”  
14

### 15 **JURISDICTION AND VENUE**

16 5. Jurisdiction of this court arises under 47 U.S.C. § 227 *et seq.* and 28 U.S.C. § 1331.

17 6. Diversity jurisdiction is established under 28 U.S.C. §1332 as the matter in  
18 controversy exceeds \$75,000.00, Plaintiff is a citizen of South Carolina, and Defendant is  
19 a citizen of New York.  
20

21 7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the  
22 events or omissions giving rise to the claim occurred in this District. Because Defendant  
23 transacts business here, personal jurisdiction is established.  
24

### 25 **PARTIES**

26 8. Plaintiff incorporates herein by reference all of the above paragraphs of this  
27 Complaint as though fully set for the at length herein.  
28

1 9. Plaintiff is a natural person residing in the city of Walhalla, Oconee County, South  
2 Carolina.

3 10. Defendant is a financial institution that often issues credit cards to consumers with  
4 its principal place of business located in 200 Vesey Street, New York, NY and can be  
5 served at its registered agent at Corporation Service Company, 28 Liberty St, New York,  
6 NY 10005.  
7

8 11. Defendant is also one who enforces or attempts to enforce an obligation that is owed  
9 or alleged to be owed, to a creditor, by a consumer as a result of a consumer transaction.  
10

11 12. Defendant acted through its agents, employees, officers, members, directors, heirs,  
12 successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
13

### 14 **FACTUAL ALLEGATIONS**

15 13. Plaintiff incorporates herein by reference all of the above paragraphs of this  
16 Complaint as though fully set forth at length herein.

17 14. Several years ago, Plaintiff acquired an American Express Cash Magnet Card from  
18 American Express.  
19

20 15. In or around March 2020, Plaintiff changed her job and was supposed to begin her  
21 new job on March 30, 2020.

22 16. However, before she could begin her new job the COVID-19 pandemic started, and  
23 the employer revoked its offer to Plaintiff.  
24

25 17. Plaintiff was unemployed for three months and was unable to receive  
26 unemployment insurance during this time.

27 18. In July 2020, she started working at her new job but became ill with the COVID-19  
28 virus. The grueling symptoms of the infection left her unable to work for over a month.

1 19. Plaintiff did not receive unemployment insurance or worker's compensation for the  
2 time she was unable to work due to COVID-19.

3 20. During the time Plaintiff was out of work, Plaintiff used her financial resources to  
4 care for herself and her mother, which she has done since Plaintiff's father passed away in  
5 September 2019.

6 21. Because Plaintiff was out of work for approximately four months, Plaintiff  
7 struggled financially and was unable to make payments on Defendant's Account.  
8

9 22. In or around February 2021, American Express began calling Plaintiff on her  
10 cellular phone number ending in 7468.  
11

12 23. Defendant is attempting to collect on one or more alleged debts from Plaintiff which  
13 were a result of a consumer credit transaction.  
14

15 24. In an attempt to hide its true identity and to harass Plaintiff, American Express  
16 called from at least the following eight (8) phone numbers: (623) 492-1073, (623) 492-  
17 1258, (623) 492-4206, (623) 492-8037, (800) 528-4800, (801) 945-9061, (801) 945-9062,  
18 and (801) 945-9067.  
19

20 25. Upon information and belief, American Express owns and operates these phone  
21 numbers.

22 26. On or about February 26, 2021, at about 8:53 a.m., Plaintiff received a call on her  
23 cellular phone from Defendant using the number (800) 528-4800.  
24

25 27. After answering the call, Plaintiff noticed a short pause before Defendant's  
26 representative began speaking, consistent with the use of an automatic dialing system.  
27  
28

1 28. During this conversation, Plaintiff spoke with a representative; at which point  
2 Plaintiff unequivocally revoked consent to be contacted by phone any further. Plaintiff also  
3 told the representative about her financial hardships due to COVID-19.  
4

5 29. Despite revoking consent, Plaintiff continued to be harassed by phone calls from  
6 American Express multiple times per day.

7 30. Between February 26, 2021, and September 31, 2021, American Express willfully  
8 called Plaintiff on her cell phone using an automatic telephone dialing system  
9 approximately **two hundred (200)** times after Plaintiff had revoked consent.  
10

11 31. Upon information and belief, each time Plaintiff received a phone call from  
12 American Express there was a brief pause prior to speaking with a representative,  
13 indicating the use of an automatic telephone dialing system.  
14

15 32. American Express called Plaintiff up to five (5) times a day; further indicating the  
16 use of an automatic telephone dialing system.

17 33. On the **vast majority** of calls, American Express also left pre-recorded or artificial  
18 voice messages for Plaintiff without her consent.  
19

20 34. During the time of the calls, Plaintiff worked as check-out receptionist at family  
21 health care facility and was often interrupted by calls from American Express, causing her  
22 work to greatly suffer and causing additional stress during her workday.

23 35. Plaintiff's boss asked her who kept calling and interrupting her during her work  
24 hours and Plaintiff truthfully told him it was American Express, who was the only creditor  
25 that refused to stop calling Plaintiff when she requested they stop.  
26

27 36. In or about the middle of 2021, Plaintiff, who is only 49 years old, also suffered  
28 from a Cerebral Vascular Attack ("CVA") and has been unable to work since August 2021.

1 37. Doctors (psychologists, counselors, neurologists) have told Plaintiff that her  
2 seizures are driven by stress. The barrage of calls from American Express caused  
3 significant stress to Plaintiff.  
4

5 38. Doctors have told Plaintiff that because of her seizures and mental incapacities  
6 (including pseudo dementia), she will not be able to hold down a job in the future.  
7

8 39. Plaintiff also has a brain tumor that causes mental incapacities.  
9

10 40. Plaintiff now can no longer drive and uses a wheelchair to get around.  
11

12 41. Plaintiff's longtime friend and roommate for the last few years has become her 24-  
13 hour caregiver, which Plaintiff's doctors say she requires. Her caregiver has personal  
14 knowledge of the stress caused to Plaintiff by the incessant calls from American Express.  
15

16 42. Without income, Plaintiff can barely afford basic necessities. Her devastating  
17 physical and mental issues snowballed quickly in 2021. Her recent application for social  
18 security benefits is still pending.  
19

20 43. Upon information and belief, American Express was well aware of Plaintiff's health  
21 and financial hardships due to COVID-19 and her CVA but continued to harass her by  
22 calling her multiple times a day even though she revoked her consent to be contacted via  
23 phone.  
24

25 44. Upon information and belief, Defendant called third parties to attempt to collect a  
26 debt from Plaintiff.  
27

28 45. Upon information and belief, Defendant's system "use[s] a random generator to  
determine the order in which to pick phone numbers from a preproduced list" and "then  
store[s] those numbers to be dialed at a later time," consistent with footnote 7 in *Facebook,  
Inc. v. Duguid*, 28 Fla. L. Weekly Fed. S. 721, at \*6 n.7 (U.S. 2021).

1 46. Upon information and belief, Defendant's system used to call Plaintiff has the  
2 capacity to store a telephone number using a random or sequential number generator.

3 47. Upon information and belief, Defendant's system used to call Plaintiff has the  
4 capacity to produce a telephone number using a random or sequential number generator.

5 48. Defendant is familiar with the TCPA, SCCPA, and SCUTPA.

6 49. Defendant's conduct was not only done willfully but was done with the intention of  
7 causing Plaintiff such distress, so as to induce her to pay the debt or pay more than she was  
8 able.  
9

10 50. Defendant's intrusion upon Plaintiff's seclusion was highly offensive to the  
11 reasonable person, oppressive, outrageous, and exceeded reasonable collection efforts.  
12 Defendant's conduct was especially unreasonable because it called relentlessly shortly  
13 after Plaintiff had explained why he could not repay Defendant and on multiple occasions  
14 expressly revoked consent to be called.  
15

16 51. Due to American Express' actions, Plaintiff has suffered extreme emotional  
17 distress, invasion of privacy, daily interruption during her job, loss of sleep, and actual  
18 damages.  
19

## 20 **COUNT I**

### 21 **(Violations of the TCPA, 47 U.S.C. § 227)**

22 52. Plaintiff incorporates by reference the above factual allegations of this Complaint  
23 as though fully stated herein.  
24

25 53. Defendant violated the TCPA. Defendant's violations include, but are not limited  
26 to the following:  
27

28 a. Within four years prior to the filing of this action, on multiple occasions,

1 Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent  
2 part, “It shall be unlawful for any person within the United States . . . to make any  
3 call (other than a call made for emergency purposes or made with the prior  
4 express consent of the called party) using any automatic telephone dialing system  
5 or an artificial or prerecorded voice — to any telephone number assigned to a . . .  
6 cellular telephone service . . . or any service for which the called party is charged  
7 for the call.  
8

9  
10 b. Within four years prior to the filing of this action, on multiple occasions,  
11 Defendant willfully and/or knowingly contacted Plaintiff using an artificial  
12 prerecorded voice or an automatic telephone dialing system and as such, Defendant  
13 knowing and/or willfully violated the TCPA.  
14

15 54. As a result of Defendant’s violations of 47 U.S.C. § 227, Plaintiff is entitled to an  
16 award of five hundred dollars (\$500.00) in statutory damages, for each and every violation,  
17 pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or  
18 willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred  
19 dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b).  
20

## 21 **COUNT II**

### 22 **(Violations of SCCPA, S.C. Code Ann § 37-5-108(2))**

23 55. Plaintiff incorporates herein by reference the factual allegations of this complaint as  
24 though fully set forth herein at length.  
25

26 56. Defendant violated the SCCPA. Defendant’s violations include, but are not limited  
27 to, the following:  
28



1 57. American Express Company violated the SCCPA by engaging in unconscionable  
2 conduct in collecting a debt, which includes communicating “with anyone other than the  
3 consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the  
4 attorney of the creditor or debt collector, unless the consumer or a court of competent  
5 jurisdiction has given prior direct permission.” S.C. Code Ann § 37-5-108(5)(b)(iv).

7 58. Defendant violated the SCCPA by engaging in unconscionable conduct in collecting  
8 a debt, which includes “caus[ing] a telephone to ring repeatedly during a twenty-four-hour  
9 period...” S.C. Code Ann § 37-5-108(5)(b)(vii).

11 59. Defendant’s acts, as described above, were done intentionally with the purpose of  
12 coercing Plaintiff to pay the alleged debt.

13 60. As a result of the foregoing violations of the SCCPA, Defendant is liable to Plaintiff  
14 for actual damages up to \$1,000 under S.C. Code Ann. § 37-5-108(2).

### 16 **COUNT III**

#### 17 **(Violations of SCUTPA, S.C. Code Ann § 39-5-20)**

18 61. Plaintiff incorporates herein by reference the above factual allegations of this  
19 complaint as though fully set forth herein at length.

20 62. Defendant violated the SCUTPA. Defendant’s violations include, but are not limited  
21 to, the following:

22 63. Defendant’s actions constitute an “unfair. . . practice in the conduct of. . . commerce.”  
23 Defendant’s constant and repeated calls to Plaintiff, after she revoked consent to be  
24 called, were intentionally made from at least eight (8) different phone numbers, with  
25 the intent to trick her into answering the call.  
26  
27  
28

1 64. As a result of Defendant's violations of S.C. Code Ann § 39-5-20, Plaintiff is entitled  
2 to actual damages, costs, and attorney's fees. See S.C. Code Ann § 39-5-140. If the  
3 court finds that the violation was "willful or knowing," the "court shall award" treble  
4 damages. *Id.* Furthermore, the statute provides for a civil penalty of up to \$5,000.00  
5 per violation of S.C. Code Ann § 39-5-20 to be paid to the State of South Carolina  
6 upon the petition of the Attorney General.  
7

8  
9 **COUNT IV**  
10 **(Intrusion Upon Seclusion)**

11 65. Plaintiff incorporates by reference the above factual allegations of this Complaint  
12 as though fully stated herein.

13 66. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon seclusion  
14 as, "One who intentionally intrudes... upon the solitude or seclusion of another, or his  
15 private affairs or concerns, is subject to liability to the other for invasion of privacy, if the  
16 intrusion would be highly offensive to a reasonable person."  
17

18 67. Defendant violated Plaintiff's privacy. Defendant's violations include, but are not  
19 limited to, the following:  
20

21 a. Defendant intentionally intruded, physically or otherwise, upon Plaintiff's  
22 solitude and seclusion by engaging in harassing phone calls in an attempt to collect  
23 on an alleged debt despite numerous requests for the calls to cease.

24 b. The number and frequency of the telephone calls to Plaintiff by Defendant  
25 after numerous requests for the calls to cease constitute an intrusion on Plaintiff's  
26 privacy and solitude.  
27  
28

1 c. Defendant's conduct would be highly offensive to a reasonable person as  
2 Plaintiff received calls that often interrupted Plaintiff's work and sleep schedule and  
3 caused her physical symptoms and seizures from stress.

4 d. Defendant's acts, as described above, were done intentionally with the  
5 purpose of coercing Plaintiff to pay the alleged debt.

6  
7 68. By calling Plaintiff approximately two hundred times any reasonable person would  
8 be offended by Defendant's conduct.

9  
10 69. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable to  
11 Plaintiff for actual damages. If the Court finds that the conduct is found to be egregious,  
12 Plaintiff may recover punitive damages.

13  
14 **PRAYER OF RELIEF**

15 **WHEREFORE**, Plaintiff Jennifer Gibby, respectfully requests judgment be  
16 entered against American Express for the following:

17 70. Statutory damages of \$500.00 for each and every negligent violation of the TCPA  
18 pursuant to 47 U.S.C. § (b)(3)(B);

19  
20 71. Statutory damages of \$1500.00 for each and every knowing and/or willful violation  
21 of the TCPA pursuant to 47 U.S.C. § (b)(3);

22 72. Actual damages fees pursuant to S.C. Code Ann. § 37-5-108(2);

23 73. Actual damages, costs, and attorney's fees pursuant to S.C. Code Ann. § 39-5-140;

24 74. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed  
25 under the law; and  
26

27 75. Any other relief that this Honorable Court deems appropriate.  
28

1 Respectfully submitted this 21st day of January 2022.

2  
3  
4 /s/ Chauntel Bland

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